N & T Associates, Inc. d/b/a Aladdin Hotel and General Sales Drivers, Delivery Drivers & Helpers Local #14, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 31-RC-5526

22 May 1984

DECISION ON REVIEW

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 14 July 1983 the Regional Director for Region 31 issued a Decision and Direction of Election in the above-captioned proceeding in which he found appropriate the Petitioner's requested unit of all casino employees, including "21" dealers, keno runners, keno writers,1 bacarrat dealers, bacarrat shills, and craps dealers, excluding all boxmen, floormen, pit bosses, clerical employees, guards and supervisors as defined in the Act. In accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations the Employer filed a timely request for review of the Regional Director's decision on the ground that the Regional Director's failure to exclude from the unit those craps and 21 dealers who substitute for supervisory and/or managerial personnel on a regular and substantial basis is a clear departure from officially reported Board precedent.

By telegraphic order dated 12 August 1983 the National Labor Relations Board granted the Employer's request for review and stayed the election pending review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the entire record in this case and makes the following findings.

The Employer is engaged in the operation of a hotel and gambling casino in Las Vegas, Nevada. Among the casino games are the following: craps; 21, commonly known as blackjack; baccarat; keno; and slot machines. The casino operates three 8-hour shifts, 7 days a week. Of the three shifts, the night, or swing shift, has the most business and Fridays and Saturdays are the busiest days of the week. The executive vice president in charge of casino operations has overall responsibility for the casino operations. Reporting to him is the casino manager who directs a number of shift managers, e.g., shift manager in charge of craps and shift

manager in charge of 21. The shift managers also have backups called pit bosses.

Craps, a dice game, is played on a 14-foot-long rectangular table. The Employer is licensed to operate five craps tables, but the number of tables actually open for play at any given time depends on the time of the day and the day of the week. During a typical day shift, the Employer assigns four dealers, two boxmen, and one floorman to each craps table. Two of the dealers place, collect, and pay customer bets; one dealer works as a stickman, controlling the dice and declaring winning and losing bets; and one dealer is on break. The dealers rotate their duties throughout the shift, working as a dealer, stickman, and relief person.

Although two boxmen are assigned to each table, they do not work the table together but instead take turns, relieving one another during the shift. The boxman, among other things, controls the speed of the game through the stickman; observes all bets placed, called, and paid; monitors the flow of money between the Employer and the table, and the table and the customers; decides within limits when to extend credit to customers; limits the number of customers who can play at the table; directs the delivery of drinks to customers; and enforces the game rules, the Employer's playing policies, and dealing procedures. Also, the boxman has the authority to issue oral warnings to the dealers and to remove them from the tables and send them home for a breach of the Employer's policies. The dealers may not argue with the boxman, but must follow his directions throughout the course of the game.

The floorman for the craps game usually walks around among several craps tables, even though he is generally assigned to a certain table. The floorman has under his supervision the boxman and dealers, but the boxman is in complete charge of the craps game.

The Employer is licensed to operate 32 black-jack tables for the card game referred to herein as 21. Again, the number of tables actually open for play is dependent on the time of day, day of the week, and season of the year. The 21 and craps operations are separate. One dealer is assigned to each 21 table and he receives his supervision and direction from a floorperson who is responsible for four tables. The shift boss or his backup is in charge of all the 21 operations on a given shift.

The 21 floorperson's duties are closely aligned with those of the craps boxmen. The 21 floormen enforce the game rules, dealing procedures, and the Employer's policies; monitor the dealers' performances; and have the authority to issue oral and

¹ The Regional Director issued an erratum to his Decision and Direction of Election on 22 July 1983 to correct an inadvertent omission of keno writers from the unit description.

written reprimands to the dealers and remove them from the game for rule or policy infringement.

The parties stipulated and the Regional Director found that persons who work full time as craps boxmen and 21 floormen are supervisors within the meaning of Section 2(11) of the Act because they responsibly direct employees in their work using independent discretion and judgment, have the independent authority to issue oral reprimands, and can effectively recommend further discipline.

The Employer routinely uses craps dealers as substitutes for craps boxmen and 21 dealers as substitutes for 21 floormen on weekends and holidays as well as during vacations, peak business seasons, and illnesses. Substitutes are selected on the basis of Employer rotation, scheduling considerations, and dealer competency. The Employer attempts to promote from within; thus the substitution process is also a training ground for dealers who desire to become full-time boxmen and floormen. In fact 50 percent of the full-time floormen were previously 21 dealers for the Employer and had acted as substitutes before their promotions. All of the craps boxmen have been dealers.

The Employer regularly employs approximately 17 full-time craps boxmen and 35 craps dealers. Witness Robert Hamilton testified that about 9 to 10 day-shift craps dealers are scheduled on the average of 1 day a week to work as substitute boxmen on both the graveyard and day shifts. In addition, the record shows that three to four other day-shift dealers are scheduled to substitute for boxmen approximately 2 days per month on the day shift. On the swing, or night shift, 17 craps dealers are scheduled to substitute for swing-shift boxmen. These dealers, on a rotational basis, work 5 days 1 week and 4 days the next week as dealers, but spend the fifth day of the second week working as boxmen on the swing shift. In addition to the scheduled substitutions, craps dealers are also asked to substitute when regular boxmen are unavailable due to illness or other reasons. The record testimony establishes that virtually all craps dealers substitute for boxmen an average of two to four times per month.

The Employer regularly employs approximately 14 full-time 21 floormen and ninety 21 dealers. According to record testimony, about 15 to 20 of the 21 dealers substitute for floormen on all three shifts, and especially on the graveyard shift for which they are scheduled to work as floormen on a daily basis. They also substitute on weekends, holidays, and during other peak periods. Approximately three of the dealers spend 75 percent of their time as substitute 21 floormen, but the great majority of the 21 dealers do not substitute for

floorpersons. Those who do substitute average a minimum of about 2 to 3 days per month.

In addition to the foregoing evidence adduced from the testimony of various witnesses, the Employer also introduced into evidence an exhibit compiled from payroll records which specifies the dates that craps dealers substituted for boxmen for the period from January 1983 through 5 June 1983 and the dates that 21 dealers substituted for floormen between May 1983 and 5 June 1983. According to the exhibit, of the 33 craps dealers listed, only 1 dealer averaged as many as 4 days per month as a boxman. Approximately 15 dealers substituted for boxmen on the average of between 2 to 4 days per month, and approximately 18 substituted an average of fewer than 2 days per month. As for floormen, only nine 21 dealers were listed as having substituted for 21 floormen. Of these, two worked approximately three or more times per week, four worked about two or more times per weeks, two worked about 1 day per week, and one worked less than 1 day per week.

The record also establishes that dealers who substitute for boxmen or 21 floormen possess the same authority and enjoy the same wage rates during the shifts worked as do the boxmen and floormen for whom they substitute, although they do not receive a guaranteed minimum weekly salary or the same vacation and insurance benefits as do the regular boxmen and floormen. Dealers also are not allowed to park in the section reserved for full-time floormen, but continue to park in the spaces designated for dealers and full-time boxmen. However, when substituting, the dealers, like regular boxmen and floormen, wear business suits instead of their regular dealers uniforms. They are entitled to dine in the coffee shop designated for supervisory personnel when serving as boxmen or floormen, rather than in their usual area called the Help's Hall. Although the dealers may participate in a share of gratuities when working as dealers, they, like fulltime boxmen and floormen, cannot receive gratuities when working as a substitute.

It is clear from the record, as the Regional Director found, that full-time boxmen and floormen are statutory supervisors and that dealers possess the full extent of their supervisory authority when substituting for the full-time boxmen and floormen. However, in determining whether the dealers who substitute should be excluded as supervisors, the Regional Director erred in finding that only those craps and 21 dealers who spent more than 50 percent of their time acting as boxmen or floormen would be excluded, in accordance with Westing-

house Electric Corp.² Westinghouse is inapplicable here because the lead engineers who were found to be supervisors in that case performed as supervisors only at particular projects, at the premises of customers, and over nonprofessional craft employees who were not unit employees. Also, while supervising they were clearly removed from their nonsupervisory work and their status would shift from supervisory to nonsupervisory for measurable and continuous amounts of time with a sharp demarcation of their duties in each position. Here, unlike Westinghouse, substitute boxmen and floormen supervise dealers, the very employees included in the unit. Moreover, substitute boxmen and floormen spend a portion of their time dealing and a portion supervising during the same work period, in the same department with essentially the same complement of employees, and thus there is no clear separation between the dealers' supervisory and nonsupervisory duties. See Doctors' Hospital of Modesto, 183 NLRB 950 (1970).

In these circumstances the appropriate test for determining the status of employees who substitute for supervisors is whether the part-time supervisors spend a regular and substantial portion of their working time performing supervisory tasks or whether such substitution is merely sporadic and insignificant. Honda of San Diego, 254 NLRB 1248 (1981). Thus, in *Honda*, where an employee substituted regularly for the service department manager 10 of his 40 working hours each week, and possessed full supervisory authority during those 10 hours, the substitute supervisor was held to be a statutory supervisor. Likewise, in Doctors' Hospital of Modesto, supra, the Board determined that relief head nurses who regularly substituted for floor head nurses 2 days per week would have been excluded as supervisors had they also possessed supervisory authority while substituting. In Swift & Co., 129 NLRB 1391 (1961), the Board excluded a draftsman-estimator as a supervisor because he exercised supervisory authority during the 15 percent of his worktime that he substituted for departmental foremen. Similarly, in Sewell, Inc., 207 NLRB 325, 330-332 (1973), two relief persons who possessed supervisory authority, when they worked, respectively, 1 day every 2 weeks and 2 out of 8 working days as substitute supervisors, were deemed to be 2(11) supervisors within the meaning of Section 2(11).

Here the record clearly establishes that substitution by craps and 21 dealers is neither sporadic nor irregular as they regularly substitute as a result of the Employer's established, routine practice of scheduling dealers to work as substitutes for fultime boxmen and floormen. Moreover, the record demonstrates that a number of the dealers spend substantial amounts of their working time substituting for statutory supervisors. Accordingly, we find that those craps and 21 dealers who have substituted for boxmen and floormen on the average of at least two times per month over the past three months are supervisors within the meaning of Section 2(11) of the Act and are excluded from the unit found appropriate by the Regional Director.³

We shall remand this case to the Regional Director for Region 31 for the purpose of conducting an election pursuant to his Decision and Direction of Election except that the period for determining eligibility shall be the payroll period ending immediately before the date of this Decision on Review.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision on Review. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

² 163 NLRB 723 (1967), enfd. 424 F.2d 1151 (7th Cir. 1970).

³ In view of our decision herein we find it unnecessary to determine whether boxmen and floormen are also managerial employees.